Supreme Court, U.S.
FILED
JUN 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1843

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THOMAS M. RETTIG; EVA O. RETTIG,

PETITIONERS,

V.

KENT CITY SCHOOL DISTRICT,

DONNA G. LIGHTEL, SUPERINTENDENT,

MICHAEL J. CHRIN, DIRECTOR,
CHILD STUDY AND SPECIAL EDUCATION;

STATE OF OHIO BOARD OF EDUCATION,

FRANKLIN B. WALTER, SUPERINTENDENT
FOR PUBLIC INSTRUCTION,

RESPONDENTS.

BRIEF OF PETITIONERS IN REPLY TO

THE FILING ON JUNE 4, 1986 OF RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

SUBMITTED BY:

EVA O. RETTIG, PRO SE
586 Francis Street
Kent, Ohio 44240
(216) 678-0988

QUESTIONS PRESENTED

1. Whether Respondents Kent City School District and State of Ohio Department of Education are precluded by the Education for All Handicapped Children Act of 1975, 20 USC 1401 et seq. and by this Court's holding defining the role of a reviewing Court of cases filed under 20 USC 1415(e)(2) in Board of Education of the Hendrick Hudson Central School District v. Rowley, --US-- 73 L Ed 2d 690, 102 S Ct (1982) from relying on the doctrine of res judicata as espoused by them.

2. Whether the Education for All Handicapped Children Act of 1975 (EAHCA) enables and permits Respondents to refuse any and all after-school extracurricular activities to Thomas Rettig.

3. Whether Respondents have the right in this case to invoke this Court's jurisdiction under 20 USC 1254(1)

or whether Respondents are required to follow the EAHCA and Rowley, submitting to judicial review in accordance with Rowley's directives governing cases like the Petitioners' filed under 20 USC 1415 (e)(2).

4. Whether this Court should deny the pro-se certiorari petition based upon S Ct R. 21.5 as espoused in the Brief in Opposition by Respondents.

5. Whether this Court should review the documents introduced at the hearings in Kent and Columbus in 1979 and stolen from the District Court in 1981 prior to the proper disposition of the certiorari petition since they were never reviewed by a higher court. (In December 1984, the Sixth Circuit Court received, from the Office of the Ohio Attorney General, a package containing some duplicate copies of some of the stolen documents).

TABLE OF CONTENTS

Questions Presented i

Table of Authorities iii

Opinions and Judgments Below 1

Jurisdiction 2

Argument 3

Conclusion 11

Certificate of Service 12

TABLE OF AUTHORITIES

Cases

Board of Education of the Hendrick Hudson Central School District v. Rowley, --US--, 73 L Ed 2d 690, 102 S Ct (1982) ... i,ii,2,5,6,7

Rettig v. Kent City School District, 539 F. Supp. 768 (N.D.OH 1981)... 1,5

Rettig v. Kent City School District, 720 F.2d 463 (6thCir.1983)..... 1,3,7

Rettig v. Kent City School District, Slip Opinion filed 26 Jan.1984 .. 1,5

Rettig v. Kent City School District, Slip Opinion filed 10 Mar.1986 .. 1,7

US Constitution

Amendment XIV 3,10

(cont'd.)

Statutes

The Education For All Handicapped Children Act, 20 USC 1401 et seq. i,ii,6

20 USC 1415(e)(2) 2,8

28 USC 1254(1) i,2

Federal Regulations

34 CFR 300.306 5,6

Rules of Court

S Ct Rule 19.2 10

S Ct Rule 21.5 ..... ii,4

S Ct Rule 22.5 12

S Ct Rule 28.5.(c) 12

OPINIONS AND JUDGMENTS BELOW

The opinion of the Sixth Circuit Court of Appeals filed 10 Mar. 1986 is included in the Petition for writ of certiorari at App. F-35.

The order of the District Court (N.D.Ohio) filed 26 Jan. 1984 is included in the Petition at App. E-27.

Also included in the Petition are the earlier judgment of the District Court at App. B-7, and the opinion of the first round in the Court of Appeals filed 8 Nov. 1983 at App. D-13.

The documentation concerning the stealing of the documents to escape judicial review by a higher court is included therein at App. C-10--12. The Office of the AG, in Dec.'84, provided a package of duplicate copies of some of the documents stolen in 1981 from the District Court. No complete list thereof is in existence.

JURISDICTION

The Respondents seek to invoke the general jurisdiction of this Court under 20 USC 1254(1) which apparently would provide them just about any standard of proof they chose to whitewash their clients and themselves instead of the review required in this case by this Court's directive in Rowley governing the judicial review of Petitioner's case filed under 20 USC 1415(e)(2). Apparently, these providers of public education propose to ride with the current, if this Court should indeed grant the review so desperately sought by the Petitioners. Another case involving the same parties has been pending in Judge Lambros' Court in Cleveland since July 15, 1983. The same arguments advanced in the Brief in Opposition have been advanced in that Court: res judicata despite the fact the documents were stolen and escaped review.

ARGUMENT

The initial complaint of Eva Rettig seeking to challenge the evaluations and placements was disposed of by the State of Ohio on a standard of proof by preponderance of the evidence in 1979 rather than by a statutory and constitutional level of proof. See Petition, App. A-6; App. G-46; App. H-50.

While the District Court received the documents that were provided with the filing of the administrative record from Kent and Columbus, none of them were ever reviewed by a higher Court because they were stolen from the District Court in 1981 and never returned to be certified and transmitted to either Cincinnati or Washington. The first hearing panel filed its opinion without their review on 8 Nov. 1983. Petitioners learned of the theft

in February 1984. Their efforts have been totally unsuccessful to receive the judicial review they deserve from a court higher than the U.S. District Court which may or may not have been provided all of the documents from the state level review in Columbus before Franklin Walter and the State Board of Education. Perhaps this is the reason the State Defendants and the Local Defendants smell(ed) sweeter than a rose. At this time, the Respondents are again effectively applying for a whitewash/vindication from this Court by hiding behind their theft and res judicata and behind S Ct Rule 21.5. alleging incompetence of the pro-se Petitioners' honest, sincere, and best effort to bring these officials and their lawyers to justice to permit relief and redress to these powerless citizens, the Rettig family fighting for their only son.

On January 26, 1984, the District Court acted on the remanded issue of extracurricular activities which is included in our Petition, App. E-27--34. At page E-29

> The Court found that
> ... the education that Tom received between 1976 and 1979 was primarily a classroom experience. In conjunction with the classroom experience, the Kent City School District did not provide <u>any</u> after school activities in which a child like Thomas Rettig might participate, although the School District did provide such activities for its nonhandicapped students. It therefore failed to provide after school activities on an equal basis, and has been in violation of (the regulation).
> 539 F.Supp. at 780.
> Neither the regulation nor this Court's interpretation of it violate the letter or spirit of <u>Rowley</u>. ...

And on page App. E-32, the Court says

> This Court's order concerning Rettig's extracurricular activities does not violate <u>Rowley</u>. We did not read the requirement of 34 C.F.R. 300.306(a) that the District "afford handicapped children an equal opportunity for participation" to

> mandate "strict equality of opportunity or services" eschewed by Rowley. Rather, this Court sought to rectify a situation in which the District had failed to "provide any after school activities in which a child like Thomas Rettig might participate..." Ordering the District to provide Rettig with at least one hour per week of extra-curricular activities did not seek to force it to provide services "sufficient to maximize (Rettig's) potential 'commensurate with the opportunity provided other children.'" 102 S.Ct. at 3046. The order simply sought to provide him with the "free appropriate public education" that is indisputably the subject matter of the Act. Id. at 3047.
> This Court therefore determines that its order concerning Rettig's extra-curricular activities was appropriate under the Act, the regulation, and Rowley.

This is in direct conflict with the citation of Judge Krupanski by Respondents in their Brief on page 7 where the Judge simply reports the opinion of the state-appointed hearing officer. The Judge did not review the requirements of the Act. The Judge did not review the District Court's opinion in accordance with the principles for review provided by

this Court in Rowley. What he did do, speaks for itself in our Petition, App. D-13 filed 8 Nov.1983 and App. F-35 filed 10 March 1986. Neither decision claims to have provided judicial review of the documents stolen from the District Court in Oct.1981. This Court denied the appeal of Thomas Rettig in 1984 as well. Now the Respondents expect this Court to refuse review as well. That would be a nice pay-off for stealing the documents and escaping the required review by hiding behind the doctrine of res judicata! Petitioners' issues have been raised in all of the federal courts, but they were never properly adjudicated at any time by any court. Full appellate review has been denied or refused, in conflict with this Court's holding in Rowley; --US--73 L.Ed 2d 690, 102 S Ct (1982) on page 694:

> 2. In suits brought under the Act's judicial review provision, a court must first determine whether the State has complied with the statutory procedures, and must then determine whether the individualized program developed through such procedures is reasonably calculated to enable the child to receive educational benefits. If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Respondents urge this Court to apply a sham instead of the required review, by denying the Petition. Respondents further urge this Court to remove these Petitioners from its crowded docket to which Petitioners must reply that the school authorities should have provided the required services in the first place and these Petitioners would not have been forced onto any court's docket, let alone this Court's! Further, submitting the documents to appellate review would certainly have shortened this case! Why steal the exhibits?

Respondents claim that the Court of Appeals correctly applied "guidelines" and "controlling principles." Petitioners must reply with the biggest emphasis possible: Without the required multi-factored evaluation as the legal basis for the public education, Petitioner Thomas Rettig's educational needs were never fully identified, let alone fully addressed by Respondents. He is now 21 years of age and more than ever dependent on caretakers. He received no educational benefit from his educational career now all but over. He has been, for seventeen years, deliberately and systematically retarded in all areas of human development: academic, social, and vocational. Director Chrin of Kent and those above and below him have seen to it that their prophesy made in 1970 and enforced all along has been fulfilled on poor defenseless Thomas.

In their Brief in Opposition, at no time do the Respondents rely on any documents in the administrative record to prove that the evaluations and placements of Thomas have been in full compliance with State Standards for Special Education, nor with relevant federal regulations concerning due process and procedural safeguards. The Petitioners, on the other hand, have requested, under S Ct Rule 19.2, that specific documents from the administrative record be located, certified, and transmitted to this Court prior to its disposition of the certiorari petition. The request has been denied by the Offices of the Clerks in both Cincinnati and Washington, despite the provisions of S Ct Rule 19.2. The Clerks apparently have their own unpublished rules; and the phone number of the Clerk in this Court was out of commission on 6 Jun 1986.

CONCLUSION

The Petitioners implore this Court to grant their Petition in order that they may finally receive their due from the Respondents who have forced this family to litigate since 1977 when the "informal" efforts begun in 1970 remained fruitless for the handicapped child. The father of this family of four has been a teacher in the Kent City School District since 1965, the year Thomas was born. The mother has abandoned her career as teacher and devoted countless hours preparing and filing documents in the school and in the Courts. All to no avail, if Respondents get their way in this Court. Please grant the petition and review.

Respectfully submitted,

Eva O. Rettig

(Mrs.) Eva O. Rettig
Pro se
586 Francis Street
Kent, Ohio 44240

(216) 678-0988

CERTIFICATE OF SERVICE

All parties required to be served have been served. The original typed copy of this Reply Brief filed in the United States Supreme Court on Monday, ~~May 12,~~ June 9, 1986, carries the seal and signature of a notary public, as required by S Ct Rule 28.5(c).

I acknowledge that I mailed by first class, postage pre-paid, three copies of this Reply Brief to Dennis Whalen, 565 Wolf Ledges Parkway, P.O.Box 2020, Akron, OH 44309-2020; and likewise, to B. Douglas Anderson, Asst. Atty. Gen. of Ohio, State Office Tower, 30 East Broad St., Columbus, OH 43266-1410 on this day of June 1986 upon receipt of the Brief in Opposition on 6 June 1986.